

CONTRACT

This contract (the "Contract") entered into this _____ day of _____, 2016, and between Shelby County Government, hereinafter referred to as "COUNTY" and Design Specialties and Construction Company Inc., hereinafter referred to as "CONTRACTOR".

WITNESSETH

WHEREAS, the COUNTY issued Request for Proposal No. 16-006-83 for Structural Repairs and Pavement Replacement, Shelby County Fire Station #62 at 4647 Forest Hill Irene Road, Memphis, TN 38125, hereinafter in this Contract referred to as "PROJECT"; and

WHEREAS, said CONTRACTOR submitted a bid proposal in accordance with bid specifications, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference, of which said bid was accepted by the COUNTY.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the CONTRACTOR agrees and undertakes the PROJECT in accordance with the Bid Specifications which are on file in the Shelby County Purchasing Department and which are incorporated herein by reference at the price quoted for said PROJECT by the CONTRACTOR.

I. SCOPE OF WORK

1. The CONTRACTOR shall provide the services as outlined within the County's Request for Proposal No. 16-006-83 for Structural Repairs and Pavement Replacement, Shelby County Fire Station #62 at 4647 Forest Hill Irene Road, Memphis, TN 38125, and CONTRACTOR'S response thereto which are attached hereto as Exhibits "A" and "B" respectively and incorporated herein by reference as if stated verbatim (the "Services").
2. The CONTRACTOR shall coordinate all work with the COUNTY through County's Consulting Architect, John Pruett Architects. Work shall be completed within one hundred twenty (120) days of the date noted on the notice to proceed from Shelby County Government.
3. The CONTRACTOR shall give a Performance Bond and Labor and Material Bond, each equal to 100% of the amount of the Contract, with surety to be approved by the COUNTY, conditioned upon the full and faithful performance of all the terms and conditions of the Contract with special reference to paying in full in lawful money of the United States, all just and valid claims for material and labor entered into for the said work covered by this Contract. That further, this Contract shall not take effect until these Bonds have been executed and approved by the COUNTY.

4. All work by the CONTRACTOR is to be performed in a manner satisfactory to the COUNTY, and in accordance with the established customs, practices and procedures of the COUNTY. The CONTRACTOR is to periodically request sufficient conferences to insure that the work is being done by the CONTRACTOR in a satisfactory manner in accordance with the specifications as set forth in Exhibit "A" and as directed by the COUNTY.

II. TERM AND COMPENSATION

1. The term of this Contract (the "Term") will commence upon execution of this Contract and continue for a period of one hundred twenty (120) days from the actual start date as specified in the written notice to proceed.
2. The COUNTY agrees to compensate the CONTRACTOR for the provision of the Services in accordance with the CONTRACTOR's Bid/Proposal, attached hereto as Exhibit "B" and incorporated herein by reference.

In any event, the sum total of the total for the services provided by the CONTRACTOR shall not to exceed Two Hundred Forty Two Thousand, Three Hundred Thirty Three dollars (\$242,333.00) ("the fee") during any term of this Contract which shall include all reimbursable expenses. It is the duty of the CONTRACTOR to monitor such fees, costs, and expenses to ensure the CONTRACTOR does not exceed this total dollar amount. The COUNTY expressly reserves the right to deny payment of any amount billed in excess of Two Hundred Forty Two Thousand, Three Hundred Thirty Three dollars (\$242,333.00).

3. The CONTRACTOR shall submit payment applications to the Consulting Architect once a month for review. Payment applications will be made for completed labor and CONTRACTOR's supplied materials installed or stored at the project site. All payments up to final shall be subject to an additional 5% retainage that is withheld by the COUNTY. Payment applications shall then be forwarded in duplicate to the address set forth in the NOTICE section of this Contract to the attention of Mr. Cliff Norville. The COUNTY shall pay such invoices within forty five (45) days of its receipt and approval of said invoices. The COUNTY is not obligated to pay, and will withhold from payment, any amounts the COUNTY has in dispute with the CONTRACTOR based on the CONTRACTOR's non-performance or negligent performance of any of the Services under this Contract.
4. The CONTRACTOR shall not be permitted or authorized to incur costs beyond the extent that purchase orders have been issued on approved contracts and/or purchases prior to the commencement date, during the term of the contract, and/or subsequent to the termination date of County contracts or purchases without prior, expressly written, appropriate authorization pursuant to County purchasing

procedures and rules and regulations. The COUNTY is not obligated to pay nor shall the CONTRACTOR be entitled to receive payments for contract fees and expenses incurred in violation of this provision.

4. The CONTRACTOR further agrees to provide the COUNTY an amount equal to Five Hundred dollars (\$500.00) per day for liquidated damages for each consecutive calendar day required for the completion of the contract beyond the time stipulated.

III. GENERAL CONDITIONS

The parties further agree as follows:

1. CONTROL

All Services by the CONTRACTOR will be performed in a manner satisfactory to the COUNTY, and in accordance with the generally accepted business practices and procedures of the COUNTY.

2. CONTRACTOR'S PERSONNEL

The CONTRACTOR certifies that it presently has adequate qualified personnel to perform all Services required under this Contract. All work performed during the Term of this Contract will be supervised by the CONTRACTOR. The CONTRACTOR further certifies that all of its employees assigned to serve the COUNTY have such knowledge and experience as required to perform the duties assigned to them. Any employee of the CONTRACTOR who, in the opinion of the COUNTY, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the Services under this Contract.

3. INDEPENDENT STATUS

- a. Nothing in this Contract shall be deemed to represent that the CONTRACTOR, or any of the CONTRACTOR's employees or agents, are the agents, representatives, or employees of the COUNTY. The CONTRACTOR will be an independent CONTRACTOR over the details and means for performing the Services under this Contract. Anything in this Contract which may appear to give the COUNTY the right to direct the CONTRACTOR as to the details of the performance of the Services under this Contract or to exercise a measure of control over the CONTRACTOR is solely for purposes of compliance with local, state and federal regulations and means that the CONTRACTOR will follow the desires of the COUNTY only as to the intended results of the scope of this Contract.

- b. It is further expressly agreed and understood by the CONTRACTOR that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the COUNTY; that the CONTRACTOR has been retained by the COUNTY to perform the Services specified herein (not hired) and that the remuneration specified herein is considered fees for the Services performed (not wages) and that invoices submitted to the COUNTY by the CONTRACTOR for the Services performed shall be on the CONTRACTOR's letterhead.

4. REPORTS

The CONTRACTOR shall prepare and submit quarterly reports of its activities, funded under this Contract, to the originating department and the Contract Administration Department of the COUNTY. The reports shall include an itemization of the use of COUNTY's funds, and shall be inclusive of specific Services delivered. Any such reports provided to the COUNTY shall be prepared with the understanding that the COUNTY may make such reports available to the public. The quarterly reports and all books of account and financial records that are specific to the work performed in accordance with this Contract may be subject to audit by the Director of the Division of Administration and Finance of the COUNTY. The COUNTY shall have the right to withhold future disbursement of funds under this Contract and any future Contracts until this provision has been met.

5. TERMINATION OR ABANDONMENT

- a. It shall be cause for the immediate termination of this Contract if, after its execution, the COUNTY determines that:
 - i) Either the CONTRACTOR or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has pled nolo contendere, or has pled or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or
 - ii) The CONTRACTOR has subcontracted, assigned, delegated, transferred its rights, obligations or interests under this Contract without the COUNTY's consent or approval; or
 - iii) The CONTRACTOR has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer has been appointed to take charge of all or part of the CONTRACTOR assets.

- b. The COUNTY may terminate the Contract upon five (5) days written notice by the COUNTY or its authorized agent to the CONTRACTOR for CONTRACTOR's failure to provide the Services specified under this Contract.
- c. This Contract may be terminated by either party by giving thirty (30) days written notice to the other, before the effective date of termination (the "Termination Date"). In the event of such termination, the CONTRACTOR shall be paid for all Services rendered prior to the Termination Date, provided the CONTRACTOR shall have delivered to the COUNTY such statements, accounts, reports and other materials as required under this Contract; however, the CONTRACTOR shall not be compensated for any anticipatory profits that have not been earned as of the date of the Termination Date. All Services completed by the CONTRACTOR prior to the Termination Date shall be documented and tangible work documents shall be transferred to and become the sole property of the COUNTY prior to payment for the Services rendered.
- d. Notwithstanding the above or any section herein to the contrary, the CONTRACTOR shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the Contract by the CONTRACTOR and the COUNTY may withhold any payments to the CONTRACTOR for the purpose of setoff until such time as the exact amount of damages due the COUNTY from the CONTRACTOR is determined.
- e. The COUNTY has the option to cancel the Agreement and/or any Renewals if the COUNTY is put on notice of legal problems with the CONTRACTOR or any of its principals, partners, corporate officers, or agents, involving allegations of dishonesty, improper business conduct, or criminal activity. Cancellation under this provision shall be immediate and effective upon notice. The COUNTY reserves the right to exercise this provision at its discretion and any decision rendered by the COUNTY under this provision constitutes a final determination of the matter the public welfare requiring it.

6. COMPENSATION FOR CORRECTIONS

No compensation shall be due or payable to the CONTRACTOR pursuant to this Contract for any CONTRACTOR's Services performed by the CONTRACTOR in connection with effecting of corrections to the design of the Services, when such corrections are required as a direct result of negligence by the CONTRACTOR to properly fulfill any of his obligations as set forth in this Contract.

7. SUBCONTRACTING, ASSIGNMENT OR TRANSFER

- a. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party. No subcontracting, assignment, delegation or transfer shall relieve the CONTRACTOR from performance of the Services under this Contract. The COUNTY shall not be responsible for the fulfillment of the CONTRACTOR's obligations to its transferors or subcontractors.
- b. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the subcontract, assignment, delegation or transfer.

8. CONFLICT OF INTEREST

The CONTRACTOR covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of the Services. The CONTRACTOR warrants that no part of the total Contract Fee shall be paid directly or indirectly to any officer or employee of the COUNTY as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or contractor to the CONTRACTOR in connection with any work contemplated or performed relative to this Contract.

9. CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the COUNTY will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

10. EMPLOYMENT OF COUNTY WORKERS

The CONTRACTOR will not engage, on a full, part-time, or any other basis during the Term of the Contract, any professional or technical personnel who are or have been at any time during the Term of the Contract in the employ of the COUNTY.

11. ACCESS TO RECORDS

During all phases of the work and Services to be provided hereunder, the CONTRACTOR agrees to permit duly authorized agents and employees of the COUNTY to enter the CONTRACTOR's offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The CONTRACTOR will maintain all books, documents, papers, accounting records, and other evidence pertaining to the Fee paid under this Contract and make such materials available at their offices at all reasonable times during the Term of this Contract and for three (3) years from the date of payment under this Contract for inspection by the COUNTY or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof. Copies of said records shall be furnished to the COUNTY upon request.

12. ARBITRATION

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the CONTRACTOR and the COUNTY will be referred to the Shelby County Contract Administrator or its duly authorized representative, whose decision regarding same will be final.

13. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

- a. The CONTRACTOR shall indemnify, defend, save and hold harmless the COUNTY, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts—arising out of or resulting from any conduct; whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Contract or in the performance of the Services hereunder, whether performed by the CONTRACTOR, its subcontractors, agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Contract.
- b. The CONTRACTOR expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the CONTRACTOR shall in no way limit the responsibility to indemnify, defend, save and hold harmless the COUNTY or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.
- c. The COUNTY has no obligation to provide legal counsel or defense to the CONTRACTOR or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this

agreement against the CONTRACTOR as a result of or relating to performance of the Services under this Contract.

- d. Except as expressly provided herein, the COUNTY has no obligation for the payment of any judgment or the settlement of any claims against the CONTRACTOR as a result of or relating to performance of the Services under this Contract.
- e. The CONTRACTOR shall immediately notify the COUNTY of any claim or suit made or filed against the CONTRACTOR or its subcontractors regarding any matter resulting from or relating to the CONTRACTOR's performance of the Services under this Contract and will cooperate, assist and consult with the COUNTY in the defense or investigation thereof.

14. GENERAL COMPLIANCE WITH LAWS

- a. The CONTRACTOR certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of the Services under this Contract.
- b. The CONTRACTOR is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of the Services. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).
- c. This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Contract, the CONTRACTOR agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

15. NON-DISCRIMINATION

The CONTRACTOR hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to

discrimination in the performance of this Contract or in the employment practices of the CONTRACTOR on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The CONTRACTOR shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

16. ENTIRE AGREEMENT

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether oral or written.

17. AMENDMENT

This Contract may be modified or amended only by written instrument signed by both parties.

18. SEVERABILITY

If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

19. NO WAIVER OF CONTRACTUAL RIGHT

No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

20. MATTERS TO BE DISREGARDED

The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Contract.

21. SUBJECT TO FUNDING

This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the Term hereof, then this Contract will be terminated. In the event of such termination, the CONTRACTOR shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the Termination Date.

22. TRAVEL EXPENSES

All travel expenses payable under this Contract shall be in accordance with the County Travel Policy and Procedures. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by the COUNTY.

23. NON-LIABILITY FOR CONTRACTOR EMPLOYEE TAXES

Neither CONTRACTOR nor its personnel are COUNTY's employees, and the COUNTY shall not take any action or provide the CONTRACTOR's personnel with any benefits and shall have no liability for the following:

- a. Withholding FICA (Social Security) from the CONTRACTOR's payments;
- b. Making state or federal unemployment insurance contributions on behalf of the CONTRACTOR or its personnel;
- c. Withholding state and federal income tax from payment to the CONTRACTOR;
- d. Making disability insurance contributions on behalf of the CONTRACTOR;
- e. Obtaining workers' compensation insurance on behalf of the CONTRACTOR or CONTRACTOR's personnel.

24. INCORPORATION OF OTHER DOCUMENTS

- a. The CONTRACTOR shall provide Services pursuant to this Contract in accordance with the terms and conditions set forth within the Shelby County Request for Proposals/Bids as well as the Response of the CONTRACTOR thereto, all of which are maintained on file within the Shelby County Purchasing Department and incorporated herein by reference.
- b. It is understood and agreed between the parties that in the event of a variance between the terms and conditions of this Contract and any amendment thereto and the terms and conditions contained either within the Request for Proposals/Bids or the Response thereto, the terms and conditions of this Contract as well as any amendment shall take precedence and control the relationship and understanding of the parties.

25. CONTRACTING WITH LOCALLY OWNED SMALL BUSINESSES

The CONTRACTOR shall take affirmative action to assure that Locally Owned Small Businesses that have been certified by the COUNTY are utilized when possible as sources of supplies and equipment, construction and services.

26. RIGHT TO REQUEST REMOVAL OF CONTRACTOR'S EMPLOYEES

The COUNTY may interview the personnel whom the CONTRACTOR assigns to the COUNTY's work. The COUNTY shall have the right, at any time, to request removal of any employee(s) of the CONTRACTOR, whom the COUNTY deems to be unsatisfactory for any reason. Upon such request, the CONTRACTOR shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

27. INCORPORATION OF WHEREAS CLAUSES

The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

28. DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to the COUNTY by the CONTRACTOR, the CONTRACTOR understands and acknowledges that the COUNTY is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to the COUNTY by the CONTRACTOR due to Services performed pursuant to this Contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee.

29. ORGANIZATION STATUS AND AUTHORITY

- a. The CONTRACTOR represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.
- b. The execution, delivery and performance of this Contract by the CONTRACTOR has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of the CONTRACTOR, any provision of any indenture, agreement or other instrument to which the CONTRACTOR is a party, or by which the CONTRACTOR's respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

30. INSURANCE REQUIREMENTS

- a. The CONTRACTOR shall purchase and maintain, in a company or companies authorized to do business in the State of Tennessee, such insurance as will protect the County from claims which may arise out of or result from the CONTRACTOR's operations under the Contract, whether such operations are performed by himself or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the CONTRACTOR or subcontractor may be liable.
- b. The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater.
- c. The CONTRACTOR will maintain throughout the life of this Contract insurance, through insurers rated A-X or better by A.M. Best, in the following minimum requirements:
 - i) Commercial General Liability Insurance- \$1,000,000.00 limit per occurrence for bodily injury and property damage/\$1,000,000.00 personal and advertising injury/\$2,000,000.00 general aggregate coverage/\$2,000,000.00 annual aggregate products/completed operations. Shelby County Government, its elected officials, appointees and employees will be named as additional insureds. The insurance shall include coverage for the following:
 - a) Premises/Operations
 - b) XCU coverage, where applicable
 - c) Products/Completed Operations

- d) Contractual Liability
 - e) Independent Contractors
 - f) Broad Form Property Damage
 - g) Personal Injury
 - ii) Workers' Compensation and Employer's Liability Insurance – Workers' Compensation statutory limits as required by Tennessee statutes. This policy should include Employers' Liability coverage for \$1,000,000.00 per accident; Employers' Liability Disease each employee \$1,000,000.00; Employers' Liability Disease Policy Limit \$1,000,000.00. Note: The Contractor's workers compensation policy will include the following endorsement: WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT: (Form WC 00 03 13). A completed copy of this form will be included in documents provided to Shelby County by Contractor's insurance company.
 - iii) Business Automobile Liability Insurance – minimum limit of \$1,000,000.00 each accident for personal injury and property damage. Coverage is to be provided on all:
 - a) Owned/Leased Autos
 - b) Non-owned Autos
 - c) Hired Autos
 - iv) Builders Risk Insurance or Installation Floater (as applicable) – All risk replacement cost coverage in the amount of the contract.
- d. The CONTRACTOR shall provide the COUNTY with a Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal certificates on each anniversary date. The certificate holder is to read:
- Shelby County Government
Purchasing Department
160 N. Main, Suite 900
Memphis, TN 38103
- e. Self-insured retentions or deductibles of \$25,000.00 or over per loss or claim must be reviewed and agreed to by Shelby County Government prior to commencement of work under this program.
- f. All policies will provide for thirty (30) days' written notice to Shelby County of cancellation of coverage provided; with ten (10) days' notice applicable for non-payment of premium. If the insurer is not required by policy terms and conditions to provide written notice to Shelby County, the Contractor will provide immediate notice to Shelby County and evidence of replacement coverage with no lapse.

- g. All insurance policies maintained by Contractor shall provide that insurance as applying to Shelby County shall be primary and non-contributory irrespective of such insurance or self-insurance as Shelby County may maintain in its own name and on its own behalf.

31. NOTICE

Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the COUNTY's authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County Government
Support Services
584 Adams Avenue
Memphis, Tennessee 38103
Attn.: Mr. Ahmad Nemati

and

Shelby County Government
Contracts Administration
160 N. Main St., Suite 950
Memphis, Tennessee 38103

CONTRACTOR: Design Specialties and Construction Company Inc.
2280 Podesta Cove
Memphis, TN 38134
Attn: Mr. Patrick Golden

32. DATA SECURITY

CONTRACTOR warrants to the COUNTY and State that it agrees to meet the spirit and intent of all compliance requirements relating to the content of data accessed. This includes but is not limited to Payment Card Industry (PCI) data, as defined by PCI Security Standard v3.1, Protected Health Information (PHI), as defined under the in Code of Federal Regulations, Title 45, Subtitle A, Subchapter C, Part 160, Subpart A, §160.103 (45 C.F.R. §160.103), and Personally Identifiable Information (PII), as defined in the National Institute of Standards and Technology Special Publication 800-122 sections 2.1 and 2.2, in electronic and/or paper format. CONTRACTOR will sign any documents that are reasonably necessary to keep the State and the COUNTY in compliance, including, but not limited to, Data Security - Vendor Acknowledgement agreement and Acceptable Use Policy, and to abide by SCG ITS security policies including, but not limited to, the SCG Network Security and Information Security policies.

CONTRACTOR shall apply all vendor-issued security updates for system hardware and software components maintained by the CONTRACTOR within 30 days of issuance.

Upon notification by the COUNTY, the CONTRACTOR shall assure that all vulnerabilities specific to the systems maintained and identified by the COUNTY Approved Scanning Vendor (ASV), using the common vulnerability scoring system (CVSS), as not meeting compliance requirements, including but not limited to PCI Data Security Standards (DSS) and Health Insurance Portability and Accountability Act (HIPAA), are patched, updated, or otherwise modified to assure they meet said compliance requirements.

The Contractor shall promptly report to Information Technology Security Officer any breaches of Shelby County Government data and will implement immediate, appropriate corrective actions to contain and prevent recurrence.

- i) HIPAA -CONTRACTOR warrants to the COUNTY and State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract. CONTRACTOR warrants that it will cooperate with the COUNTY and State in the course of performance of the Contract so that all parties will be in compliance with HIPAA, including cooperation and coordination with COUNTY and State privacy officials and other compliance officers required by HIPAA and its regulations. CONTRACTOR will sign any documents that are reasonably necessary to keep the State and the COUNTY in compliance with HIPAA, including, but not limited to, business associate agreements.
- ii) PCI-DSS-CONTRACTOR warrants to the COUNTY that it is familiar with the requirements established by the Payment Card Industry Security Standards Council for PCI Data Security Standards (PCI-DSS) and will comply with all applicable PCI-DSS requirements in the course of this Contract. CONTRACTOR agrees to indemnify and hold the COUNTY, its officers, employees, and agents, harmless for, from and against any and all claims, causes of action, suits, judgments, assessments, costs (including reasonable attorneys' fees) and expenses arising out of or relating to any breach of COUNTY or COUNTY customer credit card or identity information due to the CONTRACTOR's actions.
- iii) Personally Identifiable Information (PII) -CONTRACTOR warrants to the COUNTY that it will protect any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or

biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

33. ORDER OF APPLICATION OF CONTRACT AND SUPPORTING EXHIBITS

In the event of a discrepancy or conflict between the terms of this Contract, the Request for Proposal (Exhibit "A"), and/or the Response to the Proposal (Exhibit "B"), the terms of this Contract shall control followed by the Request for Proposal (Exhibit "A") and, lastly, the Response to the Proposal (Exhibit "B").

It is agreed that the following documents are made a part of and incorporated fully into this construction Contract:

- A. Performance Bond
- B. Labor and Material Bond
- C. Insurance Certificate
- D. Bid Specifications (RFP No. 16-006-83, Exhibit "A")
- E. Contractor's Bid/Proposal (Exhibit "B")
- F. General Conditions of the Contract for Construction (Exhibit "C").

34. PERFORMANCE AND LABOR AND MATERIALS BONDS

The CONTRACTOR will provide the COUNTY within ten (10) days from inception date of this Contract a Performance and Labor and Materials Bond each in the amount of 100% of the Contract price for each year that this contract is in effect. Said Bonds may be pro-rated for the initial year in the event that this period of time is less than a full twelve (12) month period.

IN WITNESS WHEREOF, the parties hereto have set their signatures for the purposes contained herein, on the day and date first above written.

**APPROVED AS TO FORM
AND LEGALITY:**

SHELBY COUNTY GOVERNMENT

Contracts Administration
Assistant County Attorney

Mark H. Luttrell, Jr., Mayor

Design Specialties and Construction Co., Inc.

BY: _____

TITLE: _____

CORPORATE ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the _____, the within named bargainor, a corporation, and that he as such _____, executed the foregoing instrument for the purpose herein contained, by signing the name of the corporation by himself/herself as _____.

Witness my hand and official seal at office this _____ day of _____, 2016.

Notary Public